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SUBJECT: USTR VISIT LAYS GROUNDWORK FOR JANUARY SPECIAL 301
IPR OUT-OF-CYCLE REVIEW

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[11.](#) (SBU) Summary: USTR, Department of Commerce (DOC) and U.S. Patent and Trademark Office (USPTO) officials, accompanied by econoffs, met with congressional leaders and GRP officials to discuss IPR protection and the upcoming Special 301 Out-of-Cycle review (OCR). The GRP is keen to get off the Priority Watch List, but faces an uphill battle. IPR enforcement agencies remain stalled by a general lack of authority and resources. Proposed special IPR courts alone might not lead to improvement because appeals would place IP cases back into the old system. Recent proposed legislation on pharmaceutical patents pose a weakening of a generally strong IP code. However, the Intellectual Property Office continues to make progress and a visible decline in the overall availability of pirated and counterfeit goods were noted. Removal from the Priority Watch List is a possibility, but more action is needed before January. End Summary.

[12.](#) (U) U.S. Trade Representative (USTR) Director for Southeast Asia and Pacific Affairs David Katz, U.S. Department of Commerce (DOC) Deputy Director David Bisbee and U.S. Patent and Trademark Office (USPTO) Senior Counsel Peter Fowler visited Manila October 16-17 to meet with RP Congressional leaders and executive branch counterparts in preparation of an upcoming 301 IPR Out-of-Cycle Review (OCR), which will determine whether the RP remains on the Special 301 Priority Watch List. The meetings focused primarily on IPR protection and enforcement, although they touched on broader economic issues as well (reported in septel).

IPR ENFORCEMENT HAMPERED BY LACK OF RESOURCES AND AUTHORITY

[13.](#) (SBU) Officials at the Optical Media Board (OMB) and the Bureau of Customs expressed frustration with an overall lack of resources and authority. OMB reported that their staffing, resources and budget remain constant, but that rapidly rising utility costs are taking a toll. Of their USD 428,000 dollar budget, only about USD 89,000 is available after paying personnel and operating costs. The OMB proposes nearly doubling its staff from 66 to 111 to effectively implement its mandate. For OMB, interagency cooperation is another stumbling block. Its representative highlighted one recent case in which they tried to work with the National Bureau of Investigation (NBI), but the planned raid ultimately failed because NBI acted without OMB.

[14.](#) (SBU). The IPR enforcement unit at the Bureau of Customs is still in limbo. The unit was established in 2003, took one year to implement and still is not functional. The unit has no fixed budget nor permanent staff. Currently, the unit is working with seven agents and one lawyer. Customs officials conservatively estimate that they need at least seven lawyers and 25 to 30 agents to be effective.

IPR COURTS ON THE HORIZON

[15.](#) (SBU) The GRP's Supreme Court plans to implement three special IPR courts in metro Manila soon, according to Ismael Khan, Chief of the Court's Public Information Office. Three judges will be designated with exclusive criminal and civil jurisdiction over IPR cases. The Court does not plan to create a separate IPR appellate court; existing appellate courts will accommodate IPR appeals so once a case is appealed, prosecutors will encounter long delays once again. There are over 1400 IPR cases pending with 95 percent of cases concentrated in Manila. Khan commented that if the caseload becomes too heavy, the Supreme Court will simply designate more IPR courts. Khan emphasized that it is important to try and accomplish these changes within the

existing judicial framework rather than through Congress as legislative initiatives would be time consuming and possibly unsuccessful.

16. (SBU) Comment: For the GRP and the Supreme Court, creation of IPR courts is a key initiative with respect to IPR. While the current initiative demonstrates progress, there is a risk that it could become a bureaucratic reshuffling instead of a more permanent, effective legislative change. The fact that there is no provision for a special IPR appellate court may render the IPR courts ineffective. End Comment.

U.S. STAKEHOLDERS WORRIED ABOUT PHARMACEUTICAL POLICY

17. (U) In discussions with U.S. IPR rights holders, Katz, Fowler and econoffs heard concerns about a recent bill sponsored by Senator Roxas to amend the Intellectual Property Code of the RP, with respect to patents and parallel imports for pharmaceuticals. Roxas' proposal would change the IP Code so that the period of patent protection begins after the product has been introduced anywhere in the world rather than just in the RP. Pharmaceutical companies believe that this will essentially cut the time frame for patent protection in half to 10 years. The Roxas bill will also permit pharmacies and other entities licensed to distribute pharmaceuticals to avail of parallel import schemes. Currently, only government facilities and programs can legally import drugs from countries that do not provide patent protection.

18. (SBU) The Intellectual Property Office (IPO) and Philippine pharmaceutical representatives co-sponsored a forum to discuss the Roxas bill, which by coincidence took place just after the USTR/USPTO visit. Embassies were not invited, but preliminary reports indicate that the discussion was heavily biased toward the Roxas bill. The IPO told us that the discussion covered an "educational agenda." (Note: Embassy will closely monitor developments on this proposed legislation as it is likely to become a key issue during the Special 301 review. Embassy is seeking a meeting with Roxas to explain our concerns with his bill. End note.)

IPO INCHING FORWARD

19. (SBU) Director General Adrian Cristobal of the IPO emphasized that the focal point now for the GRP's IP strategy is the IP courts. IPO is also committed to automating its patent registration and creating a searchable database, which will greatly enhance record keeping. IPO reports an annual four percent average increase in overall filing rates for patents and trademarks. IPO officials are working with the Central Bank to implement an electronic patent filing system, which they hope to have online next year. Cristobal noted that the majority of trademark applications are made by Filipino applicants with only about ten per cent attributed to foreigners.

110. (SBU) Cristobal stated that GRP interagency cooperation is improving. IPO now has a full-time secretariat chaired by a lawyer and regular case review

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meetings with prosecutors. Cristobal noted that key people are beginning to recognize that piracy affects domestic producers. Cristobal mentioned that the National Telecommunications Commission (NTC) is talking about forming its own IP unit, but IPO is working with them to try and keep the IP function within IPO while possibly installing an IPO technical expert at NTC.

111. (U) USTR stressed to Cristobal that the deadline for interested party submissions for the OCR is December 2 so that the review can be completed in January.

THE VIEW FROM CONGRESS

112. (SBU) In a meeting with Senator Ralph G. Recto, Senate Committee Chairman on Ways and Means, USTR stressed the importance of IPR protection to overall economic growth and the investment climate. Recto's position was that the necessary laws have been passed and now it is a matter of implementation. He stated that the GRP's actions demonstrate that they are fighting IPR violators. He added that he is not aware of any large-scale production or manufacturing of pirated or counterfeit goods in the Philippines and that illegal goods found in the Philippines come from Malaysia, China and other countries in the region.

113. (SBU) Econ Counselor, Commercial Counselor, Katz,

Fowler and Bisbee reviewed the IPR agenda at a private dinner with key members of Congress from the House Committees on Trade and Industry, Appropriations, Public Information and Ways and Means. These members of congress were concerned about how the Philippines' Priority Watch List status reflects badly on the investment climate. They expressed interest in working with the GRP, especially the IPO, is supporting stronger enforcement as well as meeting with industry representatives with a stake in better IPR enforcement.

VISIBLE REDUCTION OF COUNTERFEIT AND PIRATED GOODS

14. (SBU) The USTR/USDOC/USPTO team met with the Intellectual Property Coalition, which includes Philippine industry representatives who support stronger IPR measures, to discuss general IPR issues and tour a local shopping mall notorious for the sale of counterfeit goods (including apparel, sunglasses, and cellular phones) and pirated optical media (DVDs, music CDs, and computer software). While such goods are still widely available, USG officials noticed a decline in the overall quantity in comparison to their first visit in February. A second mall visit the next day affirmed this impression.

COMMENT

15. (SBU) The visit by USTR, DOC and USPTO provided a good preliminary look at where the RP stands with respect to the upcoming OCR. There is a real interest in the GRP, starting with the President, to get the RP off the Priority Watch List. However, there are still some key concerns that need to be addressed, particularly the implementation of an effective IPR court system and overall law enforcement. IP legislation is strong in the RP, but implementation is crucial. The team did see progress, but it is not yet evident whether it is enough to justify removal from the Priority Watch List. The Roxas bill and its potential to weaken patent protection for pharmaceuticals is concerning and will be monitored in coming weeks. In the meantime, the visit heightened GRP awareness and emphasized the opportunities inherent in the upcoming OCR.

JONES